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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,486	09/25/2000	Andrew D. Flockhart	4366-20	3085
48500 7590 10/13/2009 SHERIDAN ROSS P.C. 1560 BROADWAY, SUITE 1200 DENVER, CO 80202				
EXAMINER ALVAREZ, RAQUEL				
ART UNIT		PAPER NUMBER		
3688				
MAIL DATE		DELIVERY MODE		
10/13/2009		PAPER		

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* ANDREW D. FLOCKHART, RICHARD B. HULL,
9 GREGORY L. ANDERSON, BHARAT KUMAR,
10 AND KEVIN GEORGE IRWIG
11

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13 Appeal 2008-004517
14 Application 09/669,486
15 Technology Center 3600
16

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18 Decided: ¹ October 13, 2009
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21 Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
22 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.
23 FETTING, *Administrative Patent Judge*.

24 DECISION ON APPEAL

25 STATEMENT OF THE CASE

26 Andrew D. Flockhart, Richard B. Hull, Gregory L. Anderson, Bharat Kumar,
27 and Kevin George Irwig (Appellants) seek review under 35 U.S.C. § 134 of a final

¹ The two month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

rejection of claims 44, 45, and 47-84, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

We REVERSE.

The Appellants invented a way of routing a contact to a contact center based on one or more of the identifications of a customer, a file address associated with the customer, the historical business relationship with the customer, an estimated business value of the customer, one or more of the items in an order or collection of item(s) of the customer, and/or a value of one or more of the items in the collection of item(s). This information is typically used to decide on the quality and/or skills of the agent needed to service the contact and/or the prioritization of the contact to provide more desirable customers with lower queue wait times. (Spec. 2:14-21).

An understanding of the invention can be derived from a reading of exemplary claim 44, which is reproduced below [some paragraphing added].

44. A method, comprising:

(a) providing,

on a first communication channel and as part of a first contact with a customer,

the first contact being a potential sales transaction with the customer,

at least one web page to a web browser associated with the customer,

wherein the customer selects,

for possible purchase,

- 1 a set of one or more items from the provided at least one
2 web page;
- 3 (b) receiving,
4 from the customer and as part of the same sales
5 transaction,
6 a request for servicing by an agent of the contact center,
7 wherein the servicing is to be effected
8 by a second contact with the customer
9 on a second communication channel different from
10 the first communication channel;
- 11 (c) downloading,
12 onto a computer executing the customer's web browser,
13 an applet;
- 14 (d) evaluating
15 at least one item in the set of one or more items
16 to identify at least one of
17 (i) an item value and
18 (ii) item type in the set,
19 wherein step (d) is performed by the applet
20 when the applet is being executed by the customer's
21 computer; and
- 22 (e) routing
23 the request of the customer
24 to an agent in the contact center,
25 the agent being selected based, at least in part,
26 on the identified at least one of (i) item value and
27 (ii) item type,
28 wherein the set of one or more items is a
29 shopping cart,
30 wish cart, and/or

wish list.

This appeal arises from the Examiner's Final Rejection, mailed April 26, 2005. The Appellants filed an Appeal Brief in support of the appeal on April 6, 2006. An Examiner's Answer to the Appeal Brief was mailed on July 3, 2006. A Reply Brief was filed on September 5, 2006.

PRIOR ART

The Examiner relies upon the following prior art:

Miloslavsky	US 6,597,685	Jul. 22, 2003
Walker	US 6,088,444	Jul. 11, 2000

REJECTION

Claims 44, 45, and 47-84 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Miloslavsky and Walker.

ISSUES

The issue of whether the Appellants have sustained their burden of showing that the Examiner erred in rejecting claims 44, 45, and 47-84 under 35 U.S.C. § 103(a) as unpatentable over Miloslavsky and Walker turns primarily on whether the references describe operations on a virtual shopping cart or equivalent.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Miloslavsky

01. Miloslavsky is directed to in an Internet Protocol-capable call center system (Miloslavsky 2:29-43).
02. Miloslavsky describes designing a system for the customer to place orders through a web page by clicking on an icon on a web page to order a product associated with the icon (Miloslavsky 12:1-6).
03. Information on the service agents such as language skill or knowledge of products already purchased could be used as some of the factors in selecting an appropriate service agent to interact with a particular user (Miloslavsky 13:45-49, referring to 1:58-61).
04. Miloslavsky describes communicating between a customer and a service agent using two different channels, one channel being the display of a web page a customer is currently displaying (Miloslavsky Figs. 2 & 7).
05. The web page originated from server contains an icon, such as a button. When the user wishes to initiate telephone communication with a service assistance center, he/she clicks the button. The service agent who will interact with the user is able to see the same web page the user is seeing, along with other information about the customer site (Miloslavsky 12:44 – 13:15; exemplified at 15:5-22).
06. When the server delivers the request and the data to the SRP, the SRP delivers the information to an external router that reserves a telephone number and associates it with a telephone used by the selected service agent. The telephone number received by the SRP is sent to the server, which in turn sends the number to the customer's browser, which then

dials the telephone number so as to establish telephone connection to the selected service agent (Miloslavsky 15: 22-40).

07. Miloslavsky also describes an email routing embodiment (Miloslavsky Fig. 21; 36:12-21).

08. This email embodiment automatically routes the e-mails to the most qualified and available support person. For example, a support person may be an expert in one product of ABC. All e-mails related to this product will be routed to this person automatically. The same support person may provide support involving telephone, facsimile, e-mail, or data processing (Miloslavsky 36:39-54).

09. The processing center contains detailed information on each support person, products and customers. Information of support persons includes the skill set, including product expertise and prior relationship with customers. Information of customers includes the content of their previous e-mails and the products they bought. A router selects the most qualified and available support person to respond to a particular e-mail. An e-mail-to-CTI-server adapter extracts relevant information from e-mails by parsing the content of the e-mails to extract appropriate information from the content of the e-mails in accordance with predetermined criteria. Routing could be based on the product expertise of the support person (Miloslavsky 36:55 – 38:22).

Walker

10. Walker is directed to changing an assigned position of a call in a queue, with the change being dependent upon the value of the call to the vendor (Walker 1:6-10).

*Facts Related To Differences Between The Claimed Subject Matter And The
Prior Art*

11. Neither reference describes an electronic shopping cart, wish cart, or wish list.

12. Neither reference describes identifying part type or value on a web page containing product purchase selections.

Facts Related To The Level Of Skill In The Art

13. Neither the Examiner nor the Appellants has addressed the level of ordinary skill in the pertinent arts of systems analysis and programming, on line purchasing system design, and user interface design. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

Facts Related To Secondary Considerations

14. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In*

1 *re Prater* , 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci.*
2 *Tech Ctr.*, 367 F.3d 1359, 1369, (Fed. Cir. 2004).

3 Limitations appearing in the specification but not recited in the claim are not
4 read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed.
5 Cir. 2003) (claims must be interpreted “in view of the specification” without
6 importing limitations from the specification into the claims unnecessarily).

7 Although a patent applicant is entitled to be his or her own lexicographer of
8 patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*,
9 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such
10 definitions in the specification with sufficient clarity to provide a person of
11 ordinary skill in the art with clear and precise notice of the meaning that is to be
12 construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although
13 an inventor is free to define the specific terms used to describe the invention, this
14 must be done with reasonable clarity, deliberateness, and precision; where an
15 inventor chooses to give terms uncommon meanings, the inventor must set out any
16 uncommon definition in some manner within the patent disclosure so as to give
17 one of ordinary skill in the art notice of the change).

18 *Obviousness*

19
20 A claimed invention is unpatentable if the differences between it and the
21 prior art are “such that the subject matter as a whole would have been obvious at
22 the time the invention was made to a person having ordinary skill in the art.”
23 35 U.S.C. § 103(a) (2000); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406
24 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

25 In *Graham*, the Court held that the obviousness analysis is bottomed on
26 several basic factual inquiries: “[1]) the scope and content of the prior art are to be

determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved.” 383 U.S. at 17. *See also KSR*, 550 U.S. at 406. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416.

“When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 417.

“For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.” *Id.*

“Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *Id.* at 420.

ANALYSIS

Claims 44, 45, and 47-84 rejected under 35 U.S.C. § 103(a) as unpatentable over Miloslavsky and Walker.

The Appellants argue these claims by issue, each issue mapped to claims in a group. Claims 44, 58, and 71 are the only independent claims.

As to exemplary claim 44, the Examiner found that Miloslavsky describes the limitations (a) and (b), and generally the routing step itself and the shopping cart of limitation (e). The Examiner found that Walker described limitation (d) except for

the use of an applet and the selection of an agent based on product type of limitation (e). The Examiner took official notice of the ubiquity of applets for automation to find that one of ordinary skill would have accordingly also performed step (c). (Ans. 2-5.)

The Appellants contend that

(1) neither reference teaches or suggests the routing of a second contact with a customer on a second channel based on information, such as item value and/or type, obtained in a first contact with the customer on a first channel (App. Br. 13-17: ¶ B);

(2) neither reference teaches or suggests the use of item type in routing a request for a further customer contact to a resource for servicing (App. Br. 17-18: ¶ C);

(3) neither reference teaches or suggests the use of an icon in a web page to initiate a request for customer assistance coupled with product order analysis to decrease the likelihood of abandonment of the browsing session by the customer (App. Br. 18: ¶ D);

(4) neither reference teaches or suggests downloading an applet onto the customer's computer such that the applet evaluates, on the customer's computer, the set of selected items and forwards the evaluation results to the contact center for proper routing of the requested contact (App. Br. 18-21: ¶ E);

(5) neither reference teaches or suggests including the item value and/or type in a cookie (App. Br. 21-22: ¶ F);

(6) Miloslavsky fails to teach a set of dedicated data structures, such as a shopping cart, wish cart, and/or wish list, for a customer order and teaches away from the use of an applet to analyze such an order (Reply Br. 4-11: ¶ B);

(7) there is no motivation to combine the references and even if there were, the analysis would be done after rather than before agent selection (Reply Br. 12-14: ¶ C);

(8) the use of applets as found by official notice would still not result in the claimed invention (Reply Br. 14-17: ¶ D); and

(9) Miloslavsky teaches away from the use of a cookie to contain item value and/or type (Reply Br. 17-19: ¶ E).

Of these, arguments (1), (3), (4), (6), (7), and (8) apply to all of the independent claims. Arguments (2), (5), and (9) apply only to dependent claims.

As to the independent claims, we agree with the Appellants as to arguments (1), (4), and (6). Argument (3) is not commensurate with the scope of the independent claims in that this argument is premised on a lack of an icon. None of the independent claims have such an icon limitation. Arguments (7) and (8) are premised on the references describing the limitations other than the use of the applet, and because we find the references do not so describe those limitations, we do not reach arguments (7) and (8).

As to arguments (1), (4), and (6), we find that the Appellants are arguing that each of the independent claims requires a combination of elements that the Examiner has not made findings to. Instead, the Examiner made findings as to parts of these combinations without any finding that those parts were or would be combined as claimed.

1 In particular, arguments (1), (4), and (6) are directed to contending that neither
2 reference describes routing of a second contact with a customer on a second
3 channel based on information, such as item value and/or type, obtained through a
4 first channel different from the second channel and using an applet to identify the
5 value or type of an item in an electronic shopping cart or equivalent for that routing
6 of a requested contact. Thus, each of the independent claims requires that a
7 request through one channel be routed, based on the results derived by an applet
8 processing product selections from a shopping cart, entered through a channel
9 different from that used for the request.

10 The Examiner found that Miloslavsky routes some request based on product
11 data, produces an electronic shopping cart, and parses data to determine an item
12 type for routing (Ans. 2-3 and 5-7). We agree that Miloslavsky describes the two
13 separate channels and routing of communications to the appropriate service agent
14 (FF 01 & 03-06). Miloslavsky also describes placing purchases from a web site
15 (FF 02) and routing emails based on parsed information that might include product
16 data (FF 07 - 09). However, neither reference describes an electronic shopping
17 cart, wish cart, or wish list, or identifying part type or value on a web page
18 containing product purchase selections (FF 11 & 12). The Examiner cites
19 Miloslavsky 12:2-15 for a shopping cart, but this portion only describes making a
20 purchase and contains no description of creating a separate shopping cart web page
21 for such purchases. Although Miloslavsky describes parsing emails for product
22 information, nothing in Miloslavsky describes such emails as containing product
23 purchase selections. Accordingly, the Examiner has failed to present a prima facie
24 case of obviousness.

CONCLUSIONS OF LAW

The Appellants have sustained their burden of showing that the Examiner erred in rejecting claims 44, 45, and 47-84 under 35 U.S.C. § 103(a) as unpatentable over Miloslavsky and Walker.

DECISION

To summarize, our decision is as follows:

- The rejection of claims 44, 45, and 47-84 under 35 U.S.C. § 103(a) as unpatentable over Miloslavsky and Walker is not sustained.

REVERSED

JRG

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